

CONTAINS CONFIDENTIAL INFORMATION

Receipt number AUSFCC-6254266

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ELLI GRAPSAS,)	
)	
Plaintiff)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	Civil Action No. <u>20-733 T</u>
)	
Defendant)	
_____)	

COMPLAINT

Elli Grapsas (“Grapsas” or “Plaintiff”), by and through her undersigned attorney, brings this action against Defendant, United States of America, and seeks the Court’s ruling on the U.S. Department of Treasury Internal Revenue Service’s (“IRS”) denial of Plaintiff’s claims for tax refunds for each of tax years 2014, 2015, and 2016. Plaintiff filed amended returns for 2014, 2015, and 2016 on May 22, 2018 at the IRS office in Austin, Texas. Plaintiff’s social security number is [REDACTED] 7308. On the original 2014, 2015, and 2016 tax returns timely filed by Plaintiff, her husband, Aurel Zagori (“Zagori”), was erroneously listed as a taxpayer. His taxpayer identification number on those returns was [REDACTED] 1285. Plaintiff has three claims for refund, each equal to \$2,000 for a total of \$6,000. The Form 1040X’s on which the refunds were claimed are attached as Exhibit E.

1. This is an action for adjudication of tax refund claims for \$2,000 each on Plaintiff’s timely filed amended returns for tax years 2014, 2015 and 2016, which refunds the IRS denied without explanation.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 28 U.S. Code § 1346, 28 U.S.C. § 1491,

CONTAINS CONFIDENTIAL INFORMATION

and 26 U.S.C. § 7422.

3. Venue is proper in this court pursuant to 28 U.S. Code § 1346, 28 U.S.C. § 1491, and 26 U.S.C. § 7422 because this is a claim against the United States of America.

PARTIES

4. Grapsas is and was for all years at issue in this case a U.S. citizen residing at

[REDACTED].

5. The Defendant is the United States of America, by and through its Internal Revenue Service (“IRS”).

BACKGROUND

6. Grapsas is employed in Athens, Greece as a college counselor. She is married to Zagori, who is and was for all years at issue in this case a non-resident alien of the United States. He is a citizen of the Hellenic Republic of Greece. Grapsas and Zagori have two minor children, who are and were for all years at issue in this case U.S. citizens with social security numbers. Grapsas, Zagori, and their children have lived in Greece continuously since 2009.

7. Zagori held a US green card when he and Grapsas lived in the United States prior to moving to Greece. On October 7, 2014, Zagori surrendered his green card by completing Form I-407 at the US Consulate in Athens. A copy of the page from his Greek passport showing the filing of Form I-407 on that date is attached as Exhibit A. Zagori ceased to be a U.S. person for U.S. tax purposes on that date. He was a non-resident alien (“NRA”) for all years at issue in this case.

8. Grapsas filed a Form 1040 using the filing status, Married Filing Jointly, for the

CONTAINS CONFIDENTIAL INFORMATION

2014 tax year on June 6, 2015. A copy of that return is attached as Exhibit B. The IRS received and processed the return.

9. Grapsas filed a Form 1040 using the filing status, Married Filing Jointly, for the 2015 tax year on June 9, 2016. A copy of that return is attached as Exhibit C. The IRS received and processed the return.

10. Grapsas filed a Form 1040 using the filing status, Married Filing Jointly, for the 2016 tax year on June 7, 2017. A copy of that return is attached as Exhibit D. The IRS received and processed the return.

11. Each of the referenced tax returns was timely filed prior to the June 15th filing deadline that applies to U.S. persons living outside the United States.

12. Grapsas prepared and filed the tax returns referenced above herself without getting and guidance as to their correctness. She has no tax training or experience.

13. Grapsas did not know that, under Section 6013(a)(1) of the Internal Revenue Code (“the Code”), “no joint return shall be made if either the husband or wife at any time during the taxable year is a non-resident alien.”

14. Grapsas also did not know that, under Section 2(b) of the Code, a U.S. citizen is considered unmarried for tax purposes if “at any time during the taxable year his spouse is a non-resident alien,” and so could have used the status, Head of Household, because she satisfied all of the requirements.

15. Grapsas also did not know that, because Zagori was an NRA during each of the 2014, 2015, and 2016 tax years, she and Zagori were required to make an election under Section

CONTAINS CONFIDENTIAL INFORMATION

6013(g) to be eligible to file using the Married Filing Jointly status. No such election was made for any of these years. As a result, Grapsas was not legally entitled to file a joint tax return with Zagori for any of the tax years referenced above.

16. In Greece, a married couple must file a joint tax return. There is no option to file separately. Accordingly, Grapsas assumed she and Zagori would have to file joint returns in the U.S. as well.

17. Notwithstanding that she filed joint tax returns for the three years at issue, Grapsas did not report any of Zagori's income on the returns. She included only her income for which she claimed the Foreign Earned Income Exclusion, which reduced her U.S. tax liability to zero for all years.

18. Grapsas learned of the errors on the filed tax returns from a co-worker and sought advice on how to correct them.

19. Section 6511(a) of the Code provides that the statute of limitations to file a claim for refund must be made within three years from the time the return in question was filed.

20. Grapsas filed amended tax returns on Form 1040X for tax years 2014, 2015, and 2016 on May 22, 2018, which was within the three-year statute of limitations for refund claims for all three years at issue. Forms 1040X for tax years 2014, 2015, and 2016 are attached as Exhibit E.

21. In addition to correcting the errors referenced above, namely, filing as Head of Household and reporting her income, she claimed a tax credit for the Greek income taxes she paid on her income. On the amended returns for the three tax years at issue, Grapsas's tax liability was still zero. However, she was eligible for the refundable child tax credit of \$1,000 per child for

CONTAINS CONFIDENTIAL INFORMATION

each year, a total of \$6,000 for the three years.

22. After filing her amended returns, Grapsas received an LTR 105C letter from the IRS for 2014, dated September 11, 2018, denying her \$2,000 refund claim on the basis that she could not change her joint filing status because her request to file separately was received after the due date of the original return. The letter also claimed that the amended 2014 return was time-barred, but the original 2014 tax return was filed on June 6, 2015. The amended 2014 return was filed on May 22, 2018, within the three year statutory period set out in Section 6511 of the Code.

23. Grapsas did not receive LTR 105C letters for 2015 or 2016, but did get two identical LTR 916C letters, dated February 10, 2020, for those tax years, repeating the reasons for denying her claims as set out in the September 11, 2018 letter. All three letters are attached as Exhibit F.

24. On October 30, 2018, Grapsas's representatives responded to the September 18, 2018 letter, explaining that the original returns were so flawed as not to constitute returns at all and should be ignored. The letter is attached as Exhibit G.

25. Grapsas received two LTR 86C letters for 2014 and 2015, both dated April 9, 2019, responding the letter attached as Exhibit G, stating that her claims had been sent to the IRS Area Office for review. Those letters are attached as Exhibit H.

26. Grapsas then received a letter from Janet Fletcher (IRS Employee ID Number 0276951) of the IRS Appeals Office, dated May 30, 2019, advising her of a telephone settlement conference set for July 31, 2019. That letter is attached as Exhibit I.

27. On July 31, 2019, Grapsas's representatives attended the telephone conference, during which Ms. Fletcher stated that she agreed with the validity of Grapsas's claims regarding the refunds due for 2014, 2015 and 2016.

CONTAINS CONFIDENTIAL INFORMATION

28. During September 2019, Natalia Kosyak, one of Grapsas's representatives, called Ms. Fletcher regarding the status of the refunds, but did not reach her. Ms. Kosyak left a voice message asking Ms. Fletcher to call back.

29. On October 18, 2019, Ms. Fletcher and Ms. Kosyak spoke by phone. Ms. Fletcher explained that, following the July 31, 2019 call, she submitted Grapsas's file to the Appeals office for processing, but Appeals office could not generate the refunds because on the original returns Zagori's tax identification number was listed first as the taxpayer and Grapsas was listed second as his spouse. On the amended returns, Grapsas was listed as the taxpayer. Ms. Fletcher explained that Grapsas needed to be listed as the taxpayer, meaning she had to be listed first on the IRS file, so at the beginning of October 2019, she transferred Grapsas's file to the Austin campus for expedited processing, telling Ms. Kosyak that it might take up to eight weeks for the refunds to be issued. Ms. Fletcher told Ms. Kosyak that, if the refunds were not issued by December, she would update Ms. Kosyak on status of the refunds.

30. On December 17, 2019, the IRS denied all three claims without explanation. The letter is attached as Exhibit J.

COUNT I

Claim for Tax Refund – \$2,000 for Taxable Year Ending December 31, 2014

31. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 30.
32. Plaintiff's first claim seeks refund of \$2,000 (plus statutory interest) for the taxable year ending December 31, 2014.
33. Plaintiff's original return for tax year 2014 was timely filed.
34. Plaintiff's amended 2014 return was timely filed, and correctly listed Plaintiff's

CONTAINS CONFIDENTIAL INFORMATION

filing status as “Head of Household”. Plaintiff is entitled to the refundable child tax credit for both of her children, a total of \$2,000.

35. The IRS denied Plaintiff’s claim for the refund without explanation.

COUNT II

Claim for Tax Refund – \$2,000 for Taxable Year Ending December 31, 2015

36. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 30.

37. Plaintiff’s second claim seeks refund of \$2,000 (plus statutory interest) for the taxable year ending December 31, 2015.

39. Plaintiff’s original return for tax year 2015 was timely filed.

40. Plaintiff’s amended 2015 return was timely filed, and correctly listed Plaintiff’s filing status as “Head of Household”. Plaintiff is entitled to the refundable child tax credit for both of her children, a total of \$2,000.

41. The IRS denied Plaintiff’s claim for the refund without explanation.

COUNT III

Claim for Tax Refund – \$2,000 for Taxable Year Ending December 31, 2016

42. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 30.

43. Plaintiff’s third claim seeks refund of \$2,000 (plus statutory interest) for the taxable year ending December 31, 2016.

44. Plaintiff’s original return for tax year 2016 was timely filed.


45. Plaintiff’s amended 2016 return was timely filed, and correctly listed Plaintiff’s filing status as “Head of Household”. Plaintiff is entitled to the refundable child tax credit for both

46. The IRS denied Plaintiff's claim for the refund without explanation.

PRAYER FOR RELIEF

WHEREFORE, Grapsas prays that this Court grant judgment in her favor, and against the United States of America, order the IRS to pay refunds to totaling \$6,000 plus interest thereon as provided by law, award her costs as provided by law, and grant such other relief as the Court deems just and equitable.

Read and verified by Plaintiff:


Elli Grapsas
Date: 6/2/2020

Respectfully submitted,

Stephen P. Flott, Esq.
Flott & Co. PC
PO Box 17655
Arlington, VA 22216-7655
Telephone: (703) 525-5110
Facsimile: (703) 525-5122
Email: sflott@flotteco.com
Attorney for Plaintiff